Form: TH- 10
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Virginia Regulatory Town Hall

Exempt Action Final Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services (12 VAC 30)
VAC Chapter Number:	Chapter 12VAC30-40-220
Regulation Title:	Eligibility Conditions and Requirements
Action Title:	Medically Needy Income Limits
Date:	05/01/2001; Effective 07/01/2001

Where an agency or regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their regulations in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

This agency background document may be used for actions exempt pursuant to § 9-6.14:4.1(C) at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar at the proposed stage.

In addition, agency actions exempt pursuant to § 9-6.14:4.1(B) of the APA are not subject to the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and therefore are not subject to publication. Please refer to the *Virginia Register Form, Style and Procedure Manual* for more information.

Summary

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action amends the State Plan for Medical Assistance concerning the income limits that are permitted for Medically Needy categories of eligible individuals.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency .including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages and adopt the action stated therein. Because this final regulation is exempt from the public notice and comment requirements of the Administrative Process Act (Code 9-6.14:4.1 C), the Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

__________________ ____

Date C. Mack Brankley, Acting Director

Dept. of Medical Assistance Services

Additional Information

Please indicate that the text of the proposed regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law. Note that the OAG's certification is not required for Marine Resources Commission regulations.

If the exemption claimed falls under § 9-6.14:4.1(C) (4)(c) of the APA *please include the federal law or regulations being relied upon for the final agency action.*

The sections of the State Plan affected by this action are Supplement 1 to Attachment 2.6-A (12VAC30-40-220).

The purpose of this regulation is to increase the Medically Needy income limits in accordance with action taken by the 2000 Session of the General Assembly in item 319, #3c of the Appropriations Act.

This regulation will implement the federal regulations permitting States to increase the Medicaid income limits as authorized in §1931 of the Social Security Act. Medicaid is a public assistance program designed to purchase medically necessary health and medical care on behalf of eligible indigent Virginians. Thus this coverage protects the health, safety and welfare of Virginia's poorest individuals.

The Medicaid income limits for ADC-related categorically needy and the medically needy have not been increased since 1985. In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act that created welfare reform. As part of this Act, Medicaid eligibility for ADC-related families was frozen at the levels in the State's Aid to Families with Dependent Children plan in effect on June 16, 1996. In Section 114(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress also amended Title XIX and enacted a new § 1931 which sets limits on the ways and amounts by which States may increase the eligibility income limits for Medicaid ADC-related families and, thereby, for the Medically Needy. By federal law, the Medically Needy income limits may not exceed 133.3 percent of the income limits set in a State's Aid to Dependent Children (AFDC) Plan. To increase the Medically Needy income limits, therefore, a corresponding increase must be made in the income limits for the Aid to Dependent Children limits which are listed in the State Plan for Medical Assistance for families who are eligible for Medicaid because they meet the requirements of the AFDC plan. [See §1902(a)(10)(C), §1902(a)(17) and §1931 of the Social Security Act; and 42 CFR 435.811 and 42 CFR 435.1007]

There is a dramatic inequity in Medicaid income eligibility limits between Aged, Blind and Disabled individuals who receive Supplemental Security Income (SSI) and those Aged, Blind and Disabled individuals who receive their incomes from regular Social Security disability or old age benefits, retirement pensions, or Veterans benefits. The severe hardship this inequity imposes for Medically Needy individuals is illustrated by the case of a disabled woman who lost Medicaid eligibility when her income increased because she started to draw Social Security disability benefits. The woman had been eligible for Medicaid because she was receiving Supplemental Security Income (SSI) of $500 per month; however, she lost SSI when she began to receive $550 per month in Social Security disability benefits. Because she no longer received SSI, she could establish eligibility for full Medicaid benefits only as Medically Needy. In order to be Medically Needy an individual must have income within the Medically Needy income limit ($250 per month) or reduce excess income by deducting incurred medical expenses. This deduction process is called "spenddown."

This woman's $550 Social Security disability benefits exceeded the Medicaid Medically Needy income limits, and she could only re-establish Medicaid eligibility after she had reduced her excess income by incurring $1,800 in medical bills in a six-month period. She has prescriptions costing $360 each month. Even though she actually received only $50 additional income when she lost her SSI eligibility, she now has to spenddown to the much lower Medically Needy income limits. Deducting pharmacy bills of $360 per month, it will take her five months to re-establish Medicaid eligibility. She would then have Medicaid only one month before she would again have to "spenddown" for the next six months. Because she will not have a Medicaid card, she will have to find another way to buy her prescriptions and all other medical care until her incurred medical bills equal $1,800. The cost of her medicine will consume more than one-half of her income, forcing her to choose between buying her medicine or paying for food and shelter.

Pharmacy services are the primary out-of-pocket medical cost for individuals with chronic health problems like the woman in the above case example. Chronically ill individuals often take multiple medications. Inability to purchase medications can leave the ill individual at risk for preventable complications of his illness. These complications actually increase Medicaid expenditures for physician and inpatient services because hospitalized individuals quickly incur medical bills and become eligible for full Medicaid benefits. The deterioration in an individual's overall health due to lack of medication may make future medical care costs even higher.

Historically, the Medically Needy income limits have been tied to the payment levels in the Aid to Families with Dependent Children Program (AFDC). Section 1903(f) of the Social Security Act limits the Medically Needy income limits to no more than 133 1/3 percent of the AFDC payment levels. The Medically Needy income limits have been set at this maximum since the inception of Medicaid in Virginia. Many times, policy makers have desired to increase the Medically Needy income limits, but have found that the income limits could not be increased without increasing the AFDC payment levels at the same time. This was always too costly. However, in 1996, Congress passed Welfare Reform legislation that replaced the old AFDC program with Temporary Assistance for Needy Families (TANF) and abolished the tie with TANF payment levels. The new law permits increases to Medicaid income limits without increasing TANF payments.

The current Medically Needy income levels are divided into three groups based upon the AFDC income groupings. The monthly income limit for a one-person household is $216 in Group I, $250 in Group II, and $325 in Group III. The Group I income level is less than one-half the current SSI payment limit of $530 for a family of one.

In August 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This historic Act eliminated the link between Medicaid and AFDC. The Act eliminated the AFDC program and replaced it with a block grant called Temporary Assistance for Needy Families (TANF). Although the 133 1/3 cap on the Medically Needy income limits was not repealed, the Act tied Medicaid eligibility to the AFDC State Plan in effect on July 16, 1996. It further permitted the income limits in the July 16 plan to be increased by the Consumer Price Index (CPI). Cash assistance payments are based on the new TANF plan, not the old AFDC plan. Medicaid income limits are no longer linked to the TANF cash assistance payments. Thus, Medicaid medically needy income limits may be increased without any effect on cash assistance payments under TANF.

This regulatory action involves attaching an annual cost-of-living adjustment to the ADC-related categorically needy and the medically needy income limits. The change will result in only a very small increase in the income limits in FY 2001. The 2000 CPI is 3.5 percent and this income adjustment will permit a $7.59 per month increase in the income limits for an individual living in a Group I locality, a $8.75 increase in Group II, and $11.37 increase in Group III.

The primary advantage of this action is to grant to those Medicaid groups with the lowest income limits some relief by enabling them to keep more of their income to pay for their basic cost of living. This change will permit an annual cost of living adjustment and recognize the annual increase in the cost of living that is recognized for all other groups of Medicaid eligibles whose income limit is tied to some percentage of the federal poverty income guidelines. The federal poverty income guidelines are increased annually based on the increases in the Consumer Price Index (CPI). With this regulatory change all Medicaid income limits will be indexed to the CPI, treating all groups equitably.

Advocacy groups will support this change because the present inequity in the income limits is viewed as imposing an unnecessarily harsh burden on certain indigent groups. The agency projects no negative issues involved in implementing this regulatory change.

The income changes reflected in the increased income limits reflect a 3.5 percent increase in most instances. However, in the amount of increase for each Medically Needy person above 10 persons in a family unit, the increase exceeds 3.5 percent in order to meet the federal requirement at 42 CFR 435.811 that the income limit be no lower than the lowest cash assistance program. When the 3.5 percent increase was added to the Categorically Needy income limit, that limit exceeded the amount that results from the 3.5 percent increase in the Medically Needy limit. Therefore, the revised Medically Needy limit for each person over 10 in a family unit was increased to the federally mandated minimum amount.

Furthermore, for the two person family unit in Group II and Group III, the 3.5 percent increase would place the limit above the federally mandated cap of 133.3 percent of the AFDC limit. Therefore, the limit was not calculated using the 3.5% increase, but was set at the federal maximum.

In both instances, these revisions were made based upon the provision in item 319 of the Appropriations Act that authorizes the Department to take whatever actions necessary to achieve federal approval of the mandated State Plan amendments in instances in which implementing the exact wording of the Act would conflict with federal requirements.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will not have any negative affects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities.